

## **RESPONSE TO OFFICE ACTION**

### **A. Status of the Specification**

The Action objects to the specification for use of multiple trademarks and requests that they be denoted in capital letters and be accompanied by generic terminology. The Action also requests that typographic errors be corrected. In response it is noted that the specification has been amended herein to identify trademarks and correct typographic errors. Generic terminology has not been added to the specification as the meaning of the terms used is sufficiently clear to those of skill in the art with respect to identity and further the subject matter is not essential to the claimed invention. The terms are therefore in full compliance with the guidelines as set forth in the MPEP and removal of the objection is thus respectfully requested. MPEP § 608.01(v).

### **B. Status of the Claims**

Claim 1 has been amended. Claims 1 and 4-89 are currently pending and are presented for reconsideration.

### **C. Rejection of Claims Under the Written Description Requirement of 35 U.S.C. §112, First Paragraph**

The Action rejects claims 1-89 for failing to comply with the written description requirement of 35 U.S.C. § 112, first paragraph. Specifically, the Action alleges that the claims contain subject matter which was not described in the specification in such a way as to reasonably convey possession of the invention at the time the application was filed. Applicants respectfully traverse as set forth in the previous response and note that a Notice of Appeal is being filed herewith requesting reversal of the rejection.

**D. Rejection of Claims Under the Enablement Requirement of 35 U.S.C. §112, First Paragraph**

The Action rejects claims 1-89 as not being enabled by the specification. In particular, the Action alleges that the specification is enabling only for the entire 2547 nucleotide sequence of SEQ ID NO:18. Applicants respectfully traverse as set forth in the previous response and note that a Notice of Appeal is being filed herewith requesting reversal of the rejection.

**E. Rejection of Claims Under 35 U.S.C. § 102(e)**

The Action rejects claims 1, 11-13, 15, 17-18, 20, 22, 24-25, 28-30, 34-37, 57-66, 69-70, and 72 under 35 U.S.C. § 102(e) as allegedly anticipated by Muhitch (U.S. Patent Pub. No. US20040148651). The Action also rejects claims 1-2 and 11 as allegedly anticipated by La Rosa et al. (U.S. Patent Pub. No. US20040214272A1).

In response, Applicants note that current claim 1 recites:

1. An isolated nucleic acid sequence comprising a cytoplasmic glutamine synthetase GS1-2 promoter, wherein the cytoplasmic glutamine synthetase GS1-2 promoter comprises:
  - (a) a nucleic acid sequence of SEQ ID NO:18 or a fragment thereof, having promoter activity, wherein the fragment comprises from 400 to 2547 contiguous nucleotides of the nucleic acid sequence of SEQ ID NO:18; or
  - (b) a nucleic acid sequence comprising from 400 to 2547 contiguous nucleotides that hybridizes to the nucleic acid sequence of SEQ ID NO:18 under wash conditions of 2X SCP, 1% SDS at 65°C for 30 minutes.

Neither Muhitch nor La Rosa *et al.* teach all of the limitations of claim 1 and specifically do not teach the nucleic acids recited in (a) and (b) above. Therefore, it is believed that the rejections are moot, and the Applicants respectfully request withdrawal of the rejections.

In addition, Applicants note that the La Rosa reference cites multiple priority documents to establish a priority date prior to this Application. The Examiner has not demonstrated that La Rosa is in fact entitled to any of these dates and thus is prior art. Should the rejection be

maintained, Applicants respectfully request that the Examiner demonstrate the priority date of SEQ ID NO:86750 found in the La Rosa application.

Applicants finally note that a Notice of Appeal of the rejection is being concurrently filed requesting reversal of the rejection.

**F. Rejection of Claims Under 35 U.S.C. § 103**

The Action rejects claims 1 and 11-89 under 35 U.S.C. § 103(a) as obvious over Muhitch in combination with a number of other prior art references. In response, Applicants note that none of the references teach the claimed nucleic acids as shown in claim 1 and explained above. As all elements of the claims are not found in the prior art, the claims cannot be deemed obvious. A notice of Appeal of the rejection is also being concurrently filed.

Removal of the rejection is respectfully requested.

**CONCLUSION**

In view of the foregoing, Applicants respectfully request favorable consideration of this case.

The Examiner is invited to contact the undersigned attorney at (512) 536-3085 with any questions, comments or suggestions relating to the referenced patent application.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'R. Hanson', written over the printed name.

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